

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
URBAN COMM-NORTH CAROLINA, INC.)	Call Signs: KNLF372 et al.
)	
Request for Tolling of Construction Period)	File Nos. 0001939408 et al.

ORDER

Adopted: June 1, 2005

Released: June 1, 2005

By the Associate Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On December 6, 2004, Urban Comm-North Carolina, Inc., (Urban Comm) filed a Request for Tolling of Construction Period (Tolling Petition), in which it requests the tolling of the construction deadlines for each of its Personal Communications Service (PCS) licenses.¹ For the reasons set forth below, we grant Urban Comm's Tolling Petition to the extent provided herein, and accept the five-year construction notifications filed by Urban Comm on November 16, 2004.

II. BACKGROUND

2. Urban Comm was the winning bidder of ten PCS C Block licenses in Auction No. 5,² and thirteen PCS F Block licenses in Auction No. 11.³ Urban Comm's licenses were financed pursuant to the Commission's installment payment program.⁴ In 1997, the Commission suspended installment payments for PCS C Block and F Block licenses pending resolution of requests filed by certain PCS licensees to restructure their installment payment obligations.⁵ The Commission subsequently offered various debt restructuring options for C Block licensees,⁶ and required licensees to resume payments by the late

¹ Urban Comm-North Carolina, Inc., Request for Tolling of Construction Period, filed December 6, 2004.

² Call Signs KNLF372, KNLF373, KNLF374, KNLF375, KNLF376, KNLF377, KNLF378, KNLF379, KNLF380, KNLF381. The Commission conditionally granted these PCS C Block licenses to Urban Comm on September 17, 1996. See "FCC Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block BTA License, Final Down Payment Due by September 24, 1996," *Public Notice*, 11 FCC Rcd 11316 (1996).

³ Call Signs KNLG239, KNLH707, KNLH708, KNLH709, KNLH710, KNLH711, KNLH712, KNLH713, KNLH714, KNLH715, KNLH716, KNLH717, and KNLH718. These PCS F Block licenses were conditionally granted on April 28, 1997. See "FCC Announces Grant of Broadband Personal Communications Services D, E, F Block BTA Licenses Balance of Winning Bids (D and E Block) and Final Down Payment (F Block) Are Due by May 12, 1997," *Public Notice*, 13 FCC Rcd 1286 (1997).

⁴ See 47 C.F.R. §§ 1.2110, 24.711, 24.716 (1999).

⁵ See Installment Payments for PCS Licenses, *Order*, 12 FCC Rcd 17325 (1997); "FCC Announces Grant of Broadband Personal Communications Services D, E & F Block Licenses," *Public Notice*, 13 FCC Rcd 1286 (1997).

⁶ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Report and Order*, 12 FCC Rcd 16436

payment deadline of October 29, 1998.⁷ On October 28, 1998, Urban Comm filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code.⁸ Following the first of two decisions by the Second Circuit Court of Appeals,⁹ the Commission took the position that certain bankruptcy-related PCS licenses had canceled for failure to make timely payment, pursuant to section 1.2110 of the Commission's rules.¹⁰ The Commission subsequently took the position that Urban Comm's licenses had canceled as well.¹¹ In 2001, the Commission conducted an auction that included the spectrum held by Urban Comm under the licenses the Commission asserted had canceled.¹²

3. Subsequently, however, the United States Supreme Court determined that the Commission's rule providing for automatic cancellation of a license for failure to make timely payment is ineffective with respect to a licensee in Chapter 11.¹³ On July 24, 2003, Urban Comm filed a Petition for Reinstatement of Licenses (Reinstatement Petition),¹⁴ in which it sought "reinstatement" of its PCS licenses, tolling of its construction requirements,¹⁵ and various other forms of tolling relief.

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(1997) ("Restructuring Second Report and Order"); Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998); Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 6571 (1999) (*Restructuring Second Order on Reconsideration*). The restructuring options were not made available to F Block licensees. See *Restructuring Second Report and Order*, 12 FCC Rcd at 16447 ¶ 20.

⁷ *Restructuring Second Order on Reconsideration*, 14 FCC Rcd at 6584-6585 ¶¶ 25-26.

⁸ See *In re Urban Communicators PCS Limited Partnership*, Case Nos. 98-B-47996, 98-B-47997, 98-B-10086 (Bankr. S.D.N.Y. 1998) (Jointly Administered).

⁹ See *In re FCC*, 200 F.3d 43 (2d Cir. 1999), *cert. den.*, 531 U.S. 1029 (2000).

¹⁰ See FCC Informs Court That NextWave Licenses Have Cancelled and Sets Date for Auction, *News Release*, (January 12, 2000); Auction of C and F Block Broadband PCS Licenses; Notice of Auction Scheduled for July 26, 2000, *Public Notice*, 15 FCC Rcd 693 (WTB Jan. 12, 2000). Section 1.2110 of the Commission's rules provides that a license will automatically cancel if a licensee fails to make payment as required.

¹¹ See Letter from Mary Jo White, U.S. Attorney, to Charles E. Simpson, Esq., Windels Marx Lane & Mittendorf, LLP, dated June 29, 2000.

¹² See C and F Block Broadband PCS Auction Closes; Winning Bidders announced; Down Payments Due February 12, 2001, FCC Forms 601 and 602 Due February 12, 2001; Ten-Day Petition to Deny Period," *Public Notice*, 16 FCC Rcd 2339 (WTB 2001). As in the case for all auctions, the Commission advised that potential bidders are solely responsible for conducting due diligence to identify associated risks, and evaluating the degree to which such matters might affect their ability to bid on or otherwise acquire licenses. See e.g. Auction of Licenses for C and F Block Broadband PCS Spectrum: Status of FCC Form 175 Applications to Participate in the Auction, Report No. AUC-35-F (Auction No. 35), *Public Notice*, 15 FCC Rcd 22466 (WTB 2000).

¹³ See *Federal Communications Commission v. NextWave Personal Communications, et al.*, 537 U.S. 293, 123 S.Ct. 832 (2003) (*NextWave*). The Commission later dismissed FCC Form 601 long form applications and refunded down payments to eligible Auction No. 35 winning bidders of spectrum associated with licenses held by Urban Comm. See Disposition of Down Payment and Pending Applications by Certain Winning Bidders in Auction No. 35; Requests for Refund of Down Payments Made in Auction No. 35, *Order and Order on Reconsideration*, 17 FCC Rcd 23354 (2002); Requests for Refunds of Down Payments Made in Auction No. 35, *Order*, 17 FCC Rcd 6283 (2002).

¹⁴ See Urban Comm-North Carolina, Inc., For Reinstatement of Licenses and Tolling of Certain License Requirement Time Schedules, Petition for Reinstatement of Licenses, filed July 24, 2003 (Reinstatement Petition).

¹⁵ Entities holding 30 MHz C Block PCS licenses must provide service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within 10

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4. On September 23, 2003, the Wireless Telecommunications Bureau (Bureau) clarified that, in light of the U.S. Supreme Court's controlling *NextWave* opinion, the Commission's automatic cancellation rule was ineffective because Urban Comm was under the protection of Chapter 11 of the U.S. Bankruptcy Code at the time it defaulted on its installment payment obligation.¹⁶ On November 16, 2004, Urban Comm submitted construction notifications, certifying that it had met its five-year construction benchmarks for each of its C and F Block PCS licenses.¹⁷ Urban Comm subsequently filed the instant Tolling Petition on December 6, 2004, seeking to separate its request for tolling of its buildout deadlines from the other relief sought in the Reinstatement Petition,¹⁸ and requesting relief identical to that provided in the *NextWave Tolling Order*.¹⁹

III. DISCUSSION

5. We conclude that it is appropriate to provide Urban Comm relief similar to that granted in the *NextWave Tolling Order*.²⁰ In that Order, the Bureau addressed a petition by NextWave Personal Communications Inc. and NextWave Power Partners Inc. (collectively "NextWave") which sought tolling of the construction deadlines for certain C and F Block PCS licenses. The Bureau stated that it would be inequitable to hold NextWave to the original five-year buildout deadlines, given the Commission's assertion of license cancellation.²¹ The Bureau determined that it should grant NextWave's tolling request in order to provide NextWave a fair opportunity to satisfy the letter and spirit of the Commission's construction rules.²²

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years of being licensed. 47 C. F. R. § 24.203(a). PCS F Block licensees must, within five years of being licensed, provide service to at least one-quarter of the population or demonstrate that they are providing substantial service in their licensed areas. 47 C. F. R. § 24.203(b).

¹⁶ Urban Comm-North Carolina, Inc., Petition for Reconsideration of Public Notice Announcing Auction of C and F Block PCS Spectrum; Petition for Stay, *Order*, 18 FCC Rcd 18791 (WTB 2003) (*Urban Comm Clarification Order*).

¹⁷ See Urban Comm-North Carolina, Inc., FCC Form 601, File Nos. 0001939408, 0001939538, 0001939544, 0001939549, 0001939551, 0001939557, 0001939561, 0001939566, 0001939653, 0001939666, 0001939675, 0001939681, 0001939692, 0001939792, 0001939800, 0001939812, 0001939838, 0001939849, 0001939880, 0001939892, 0001939895, 0001939913, and 0001939917, filed November 16, 2004.

¹⁸ On April 4, 2005, the United States Bankruptcy Court for the Southern District of New York approved a settlement agreement between the Commission and Urban Comm regarding claims pending in Urban Comm's Chapter 11 bankruptcy case. See *Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving and Authorizing Terms and Conditions of the Proposed Settlement Agreement with the Federal Communications Commission*, rel. April 4, 2005, Case Nos. 98-B-47996, 98-B-47997, 98-B-10086 (Bankr. S.D.N.Y. 1998) (Jointly Administered). Because the settlement agreement resolved the additional issues raised in the Reinstatement Petition, Urban Comm subsequently sought withdrawal of the remaining requests on April 19, 2005. See Letter to Marlene H. Dortch, FCC, from James K. Winston, Counsel for Urban Comm-North Carolina, Inc., filed April 19, 2005.

¹⁹ See generally Tolling Petition.

²⁰ NextWave Personal Communications Inc. and NextWave Power Partners Inc., File Nos. 0000855872 et. al, *Order*, 18 FCC Rcd 3235 (WTB 2003) (*NextWave Tolling Order*).

²¹ *Id.* at 3237 ¶ 6-7.

²² *Id.*

6. Likewise, we find that we should toll Urban Comm's buildout deadlines beginning on June 29, 2000, when the Department of Justice, on behalf of the Commission, informed Urban Comm that its licenses had cancelled for nonpayment, and ending on September 23, 2003, when the Bureau issued the *Urban Comm Clarification Order*, confirming that the *NextWave* decision had rendered the automatic cancellation rule ineffective as applied to Chapter 11 debtors like Urban Comm. The original five-year construction deadlines for Urban Comm's C Block and F Block licenses were September 17, 2001, and April 28, 2002, respectively. As of June 29, 2000, 445 days remained on the five-year construction period for Urban Comm's C block licenses, and 668 days for the F block licenses.

7. Urban Comm filed construction notifications certifying that it met the five-year buildout requirement for its PCS licenses on November 16, 2004.²³ We have reviewed Urban Comm's construction notifications and find that they satisfy the requirements of section 24.203 of the Commission's rules. Because Urban Comm filed acceptable notifications 420 days after issue of the *Urban Comm Clarification Order*, which was within the time for construction remaining on both its C Block and F Block licenses, we find that it is equitable to grant Urban Comm tolling relief until the filing of these notifications. Accordingly, we toll the five-year buildout deadline for Urban Comm's PCS C Block licenses and for its PCS F block licenses until November 16, 2004, and accept Urban Comm's construction notifications.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to authority delegated under sections 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Request for Tolling of Construction Period filed by Urban Comm-North Carolina, Inc., on December 6, 2004, IS GRANTED to the extent provided herein. Thus, the construction deadlines for Urban Comm-North Carolina's PCS C and F block licenses are tolled through November 16, 2004.

9. Further, the request by Urban Comm-North Carolina, Inc., to withdraw the Petition for Reinstatement of Licenses, filed on April 19, 2005, IS GRANTED.

10. Further, the FCC Form 601 Notifications of Construction filed by Urban Comm-North Carolina, Inc., on November 16, 2004, ARE ACCEPTED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Chang
Associate Chief, Mobility Division
Wireless Telecommunications Bureau

²³ See paragraph 4 *supra*.